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Willamette Falls Paper Company, Inc.*

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

(Portland Division)

**WILLAMETTE FALLS PAPER
COMPANY, INC.,** a domestic business
corporation,

Plaintiff,

vs.

IGI RESOURCES, INC., a foreign business
corporation,

Defendant.

Civil No. _____

COMPLAINT

(Breach of Contract; Breach of Implied
Duty of Good Faith and Fair Dealing; and
Declaratory Judgment)

28 U.S.C. § 1332

NO DEMAND FOR JURY TRIAL

For its Complaint against Defendant IGI RESOURCES, INC., Plaintiff WILLAMETTE FALLS PAPER COMPANY, INC. alleges as follows:

PARTIES

1.

Plaintiff Willamette Falls Paper Company, Inc. (“Plaintiff” or “Willamette Falls”) is, and was at all times relevant to the Complaint, an Oregon corporation, with its principal place of business in West Linn, Oregon.

2.

Defendant IGI Resources, Inc. (“Defendant” or “IGI”) is, and was at all times relevant to the Complaint, an Idaho corporation, with its principal place of business in Houston, Texas.

JURISDICTION AND VENUE

3.

This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

4.

Venue is proper in the District of Oregon pursuant to 28 U.S.C. § 1391(b) because the claims arose in this judicial district.

GENERAL ALLEGATIONS

5.

Plaintiff Willamette Falls owns and operates an historic paper mill (the “Mill”) situated at the base of Willamette Falls in West Linn, Oregon. The Mill employs approximately 230 people, has been making paper for over 130 years, and sustainably produces several grades of new and recycled papers with a potential capacity of 260,000 tons annually. The papermaking process includes industrial-scale electric and natural gas consumption to operate up to three machine lines, including large boilers to heat the pulp and heated dryer cans that remove water from the freshly pressed paper.

6.

Willamette Falls has a flexible operational profile, allowing it to run when the cost of operation is sufficiently low to protect the economic viability of the Mill. One of the key variables that determines whether the Mill operates is the cost and availability of natural gas.

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7.

Willamette Falls has two options to purchase natural gas for the Mill. The first is to purchase natural gas as a bundled sales customer through a local distribution company like Northwest Natural Gas Company (“NW Natural”). The Second is to purchase natural gas and delivery services from a third-party marketer like IGI.

8.

Defendant IGI is a natural gas marketing and power trading and transportation company serving primarily commercial and industrial customers in the western United States and Canada. IGI, put simply, procures and sells natural gas to commercial and industrial customers and manages gas pipeline delivery for those customers.

9.

Until October 2022, Willamette Falls purchased gas as a bundled service through NW Natural. Prior to service from NW Natural, Willamette Falls purchased natural gas through other third-party marketers.

10.

In October of 2022, Willamette Falls discontinued purchasing its natural gas from NW Natural and negotiated with IGI to provide natural gas to the Mill as the Mill’s natural gas marketer. On October 28, 2022, Willamette Falls and IGI agreed to a Base Contract for Sale and Purchase of Natural Gas (the “Contract”) that governs the roles and responsibilities of each party regarding purchase and delivery of natural gas to the Mill.

11.

Pursuant to the Contract, IGI issues a Monthly Letter to Willamette Falls approximately ten days prior to the beginning of each delivery month specifying the Contract Quantity of Firm Gas that IGI will sell and deliver and Willamette Falls will purchase and receive during the upcoming delivery month. That Monthly Letter indicates a daily volume of gas to be delivered based on the Mill’s consumption the prior month. Under the Contract, Willamette Falls and IGI

“work together to determine the daily need for [Willamette Falls] for the upcoming delivery month.” The quantity indicated in the Monthly Letter is called the Monthly Letter Volume (“MLV”). If the MLV is above zero, IGI then acquires the daily MLV quantity at the First of Month (“FOM”) index. FOM index means:

the monthly index price for Canadian Border deliveries into Northwest as published by S&P Global, or its successor-in-interest, in Platts Inside FERC Gas Market Report, first of month publication, under the table “Monthly Bidweek Spot Gas Prices (\$/MMBtu)”, for the delivery Month, under the column “Index”, under the table “Rockies/Northwest”, in the row labeled “Northwest, Canadian border (Sumas)” and Gas delivered hereunder shall be sourced from such FOM Index point.

12.

The Contract further provides that upon receipt of the Monthly Letter, Willamette Falls has five Business Days to provide Notice to IGI that it disagrees with the MLV, and, to the extent that Willamette Falls does not timely notify IGI of any objection, Willamette Falls shall be deemed to have accepted the MLV for such Month.

13.

Following the five Business Day period for disagreement with the MLV (“Disagreement Period”), if the buyer does not disagree or otherwise modify the MLV quantity, the MLV is established at the daily quantity indicated in the Monthly Letter. That MLV is later used to purchase the daily quantity of gas at the FOM index. While price estimates are available in the market, the actual FOM index price is not known until a few days after the close of market for a particular month.

14.

Willamette Falls can elect to take a lesser quantity, including zero of the MLV, in response to the Monthly Letter within the terms of the Contract. In the case that Willamette Falls

takes zero MLV, it does not lock in the FOM index price for gas for the month but instead simply purchases any natural gas it uses at the market price for each day of use (“Daily Gas”).

15.

The Contract allows for “oral transactions.” Specifically, section 1.2, Oral Transaction Procedure, of the Contract provides that “[a]ny Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon.”

16.

IGI’s Vice President of Market Services, Steve McCandlish, was the signor on behalf of IGI on the Contract and represented to Willamette Falls that he was “their man” at IGI for gas marketing.

17.

On November 16, 2022, IGI issued the Monthly Letter for the month of December 2022’s gas. The MLV was set for 4,565 MMBtu per day and the Disagreement Period ended on November 23, 2022.

18.

In response to the Monthly Letter for the month of December 2022, Willamette Falls’ President Brian Konen sent an email to IGI’s Vice President of Market Services, Steve McCandlish saying, “Sounds like the month of December is quite high, so we won’t lock any in.” That email was sent on November 25, 2022, the first business day after the Disagreement Period for the December MLV contract closed.

19.

Willamette Falls did not provide a written or oral instruction to modify the December MLV prior to the end of the Disagreement Period. As a result, IGI locked in the MLV of 4,565 MMBtu per day at the FOM index, which settled at \$14.98 per MMBtu for December. The

December FOM index price of \$14.98 per MMBtu was uncommonly high, roughly three times the average market price for the last three years. The December market for natural gas continued to become more expensive and Willamette Falls was able to both run the Mill some days and, on other days, not operate and sell back to the market some of the gas it had locked in at \$14.98 per MMBtu.

20.

After inadvertently missing the Disagreement Period deadline for December gas by one business day, Willamette Falls was highly focused on getting its January natural gas purchase right. The natural gas market continued to show strong pricing for January. Willamette Falls leadership grew concerned about the risk of again getting locked into a large daily MLV at an elevated market price, which would make it impossible to economically operate the Mill as the price of natural gas, as only one of the inputs in the manufacturing process, could exceed the retail price of paper products produced.

21.

On December 6, 2022, Willamette Falls informed IGI by email that it would likely not be locking in any daily MLV for “a few months,” a position Willamette Falls characterized as “tak[ing] a different approach” than was anticipated when it signed the Contract in October 2022.

22.

On December 16, 2022, IGI sent Willamette Falls the Monthly Letter for the month of January 2023’s gas. The January MLV was set at 4,105 MMBtu per day despite the December 6, 2022, email from Brian Konen. The Disagreement Period for January expired at the close of business on December 23, 2022.

23.

On December 20, 2022, Willamette Falls’ President, Mr. Konen, its CFO, Susan Cruz, and its Director, Purchasing, Debbie Johnson, had an extended telephone discussion with IGI’s

VP, Steve McCandlish, regarding the January MLV contract. During this call, Brian Konen gave an oral instruction to IGI's Steve McCandlish that Willamette Falls would take *zero* daily MLV gas for January if there was a risk the price would close over \$20 per MMBtu. The December 20th call reaffirmed Mr. Konen's December 6th email instruction that Willamette Falls would likely not be locking in any daily MLV at the FOM index for "a few months." As of December 20, 2022, the January FOM index price was forecasted to be \$21 per MMBtu.

24.

During the December 20, 2022, call, Mr. McCandlish also stated that IGI would be closed on December 23 and 26, 2022. Mr. McCandlish instructed Willamette Falls that it would have until December 28, 2022, to "pull the trigger" on the January 2023 MLV contract. Notwithstanding, the standing order for a zero MLV from the December 20, 2022, phone call remained in place.

25.

Estimated pricing for the January FOM index on December 27, 2022, was \$40 to \$50 per MMBtu. On December 28, 2022, Willamette Falls attempted numerous times by phone and by email to reach Mr. McCandlish to confirm the market price and that Willamette Falls would be taking *zero* MLV for January. At 3:55pm on December 28, 2022, Mr. McCandlish informed Willamette Falls by email that IGI, in violation of the oral instruction from Mr. Konen on December 20, 2022, had locked in Willamette Falls for 4,105 MMBtu each day for January 2023 at the FOM index. The FOM index for January settled at \$45.25 per MMBtu—making the MLV contract for January 2023 a \$5,711,604,08.00 commitment. The FOM index for January 2023 is an order of magnitude higher than the normal FOM index price. In contrast, The FOM index for February 2023 settled at \$9.97 per MMBtu.

26.

On December 28, 2022, Willamette Falls immediately notified IGI by email that it had not authorized a January 2023 MLV contract for 4,105 MMBtu and that its daily MLV should

have been set to zero. Willamette Falls also scheduled a call with IGI on December 29, 2022. Willamette Falls instructed IGI to unwind the unauthorized gas purchase and mitigate the impact of the January transaction. IGI took the position that it could not unwind the January transaction.

27.

On February 10, 2023, IGI invoiced Willamette Falls \$5,711,604.08 for natural gas under that January 2023 MLV in violation of the Contract. On February 27, 2023, Willamette Falls paid the undisputed portion of the invoice in the amount of \$1,635,086.83 and deposited the disputed portion of the invoice in the amount of \$4,076,517.25 into an interest-bearing segregated account.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

28.

Willamette Falls re-alleges and incorporates by reference herein paragraphs 1 through 27 above as if fully set forth herein.

29.

Under the Contract, upon receipt of the Monthly Letter, Willamette Falls has five Business Days to provide Notice to IGI that it disagrees with the MLV, and, to the extent that Willamette Falls does not timely notify IGI of any objection, Willamette Falls shall be deemed to have accepted the MLV for such Month.

30.

If Willamette Falls timely informs IGI that it disagrees with the MLV, IGI must honor that election. On December 20, 2022, within the Disagreement Period, Brian Konen gave an oral instruction to IGI's Steve McCandlish that Willamette Falls would take *zero* daily MLV gas for January if there was a risk the FOM index price would close over \$20 per MMBtu. IGI knew or should have known that forecasted prices for the FOM index were above \$20 per MMBtu.

31.

Also on December 20, 2022, IGI instructed Willamette Falls that the Disagreement Period would close on December 28, 2022, notably, the same date the parties used for the Disagreement Period in the first month of the Contract. Estimated FOM index pricing on December 27, 2022, was \$40 to 50 per MMBtu and on December 28, 2022, the January FOM index trading closed. The FOM index for January settled at \$45.25 per MMBtu. IGI nevertheless disregarded the oral instruction from Willamette Falls and closed a transaction for January 2023 MLV gas at 4,105 MMBtu per day at \$45.25 per MMBtu on behalf of Willamette Falls.

32.

On February 10, 2023, IGI invoiced Willamette Falls \$5,711,604.08 for gas under that January 2023 MLV in violation of the Contract. On February 27, 2023, Willamette Falls paid the undisputed portion of the invoice in the amount of \$1,635,086.83 and deposited the disputed portion of the invoice in the amount of \$4,076,517.25 into an interest-bearing segregated account.

33.

As a direct result of the foregoing breaches, Willamette Falls has incurred and continues to incur direct damages currently estimated in excess of approximately \$4,076,517.25.

SECOND CLAIM FOR RELIEF

(Breach of Implied Duty of Good Faith and Fair Dealing)

34.

Willamette Falls re-alleges and incorporates by reference herein paragraphs 1 through 33 above as if fully set forth herein.

35.

Under the Contract, IGI owed Willamette Falls an implied duty of good faith and fair dealing. That duty required IGI to refrain from conduct that might impair Willamette Falls'

ability to receive the benefits of the Contract or otherwise interfere with the parties' reasonable expectations under the terms of the Contract. Among other things, Willamette Falls was entitled to expect that IGI would faithfully honor the oral instruction to not purchase any MLV quantity for January 2023 and to immediately unwind the transaction to mitigate the damages when Willamette Falls brought IGI's failure to Mr. McCandlish's attention.

36.

IGI breached its implied duty of good faith and fair dealing by, among other things, completing a transaction against the instruction of Willamette Falls when it knew that Willamette Falls did not authorize the purchase of MLV gas for January 2023 at an FOM index price over \$20 per MMBtu. Moreover, Mr. McClandish's failure to communicate accurately the timing of the transaction and detail of his capacity to unwind the unauthorized transaction also fell below the standard for good faith and fair dealing.

37.

IGI's conduct defied the reasonable expectations of the parties, deprived Willamette Falls of the benefit of its Contract, and caused the purchase and delivery of unwanted and massively overpriced gas to Willamette Falls, triggering significant financial losses.

THIRD CLAIM FOR RELIEF

(Declaratory Relief)

38.

Willamette Falls re-alleges and incorporates by reference herein paragraphs 1 through 37 above as if fully set forth herein.

39.

IGI's above-described breach of the Contract and February 10, 2023 invoice to Willamette Falls of \$5,711,604.08 for January 2023 MLV gas at the FOM index present an actual controversy under 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57.

40.

Willamette Falls is entitled to declaratory judgment that (1) Willamette Falls made a legally binding oral instruction that IGI not purchase January 2023 MLV gas at the FOM index; and that (2) IGI breached the Contract by purchasing 4,105 MMBtu of natural gas at the FOM Index on behalf of Willamette Falls in disregard of the oral instruction.

PRAYER FOR RELIEF

WHEREFORE, Willamette Falls prays for judgment and relief against IGI as follows:

1. For monetary damages currently estimated in excess of approximately \$4,076,517.25;
2. For a declaratory judgment that Willamette Fall instructed IGI not to purchase January 2023 MLV gas at the FOM index and that IGI breached the Contract by ignoring Willamette Falls' instruction;
3. For costs and disbursements; and
4. For such other relief as the Court deems just, proper, and equitable.

DATED: February 27, 2023.

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